

1 Martin A. Sabelli, Esq. SBN 164772
2 149 Natoma, 3rd Floor
3 San Francisco, CA 94105
4 Tel: (415) 284-9806
Fax: (415) 520-5810
msabelli@comcast.net

5 Attorneys for Defendant
6 GUILLERMO HERRERA

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,
10

11 Plaintiff,

12 vs.

13 IVAN CERNA, *et al.*,

14 Defendants.
15
16

Case No. CR 08-0730 WHA

**MEMORANDUM IN SUPPORT OF
TIMELINESS OF DOCKET 3136**

17
18
19 On January 26, 2011, Mr. Herrera filed a Motion to Dismiss for Outrageous
20 Government Misconduct (Docket 3136) and on January 27, 2011 he filed a Declaration
21 (Docket 3165) regarding its timeliness (in response to this Court's Order dismissing Manuel
22 Franco's Motion to Dismiss based upon timeliness). He now submits this memorandum to
support the timeliness of the Docket 3136.

23 His only point is this: This Court's Scheduling Order created a deadline for motions
24 "directed" at the indictment. Mr. Herrera's motion is directed at the conduct of the
25 investigation of this case and not at the indictment itself. The relief sought is dismissal or, in
26 the alternative, the taking of evidence, but the grounds relate to the decisions of the
27 investigators and not to the words on the charging papers.
28

1 As this Court has often observed, we are weeks away from trial. There is ample time to
2 litigate this motion and take evidence on a fundamental issue. This Motion addresses an issue
3 of public safety which the government, not the defense, has put squarely in the Court's lap.
4 This case might have been prosecuted as many smaller cases with the attendant benefits of
5 avoiding murders and violence which occurred during -- and occasionally as a result of -- the
6 length of the investigation. The community, the parties, the Court, the tax payers, and counsel
7 would have been better off.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DATED: January 28, 2011

Respectfully Submitted,

_____/s/_____
MARTIN SABELLI
Attorney for Defendant
GUILLERMO HERRERA